



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0389]

RIN 1625-AA00

Safety Zone; Nautical City Festival Air Show, Rogers City MI.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in the Captain of the Port Sault Sainte Marie zone. This proposed safety zone is intended to restrict vessels from certain portions of water areas within Sector Sault Sainte Marie Captain of the Port zone. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with an air show performance.

DATES: Comments and related materials must be received by the Coast Guard on or before [INSERT 30 days AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0389 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor,
Room W12-140, 1200 New Jersey Avenue SE, Washington, DC
20590-0001.

(4) Hand delivery: Same as mail address above,

between 9 a.m. and 5 p.m., Monday through Friday, except
Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four
methods. See the "Public Participation and Request for
Comments" portion of the SUPPLEMENTARY INFORMATION section
below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on
this proposed rule, call or email MST3 Kevin Moe, Prevention
Department, Coast Guard, Sector Sault Sainte Marie, MI,
telephone (906) 253-2429, email Kevin.D.Moe@uscg.mil. If
you have questions on viewing or submitting material to the
docket, call Renee V. Wright, Program Manager, Docket
Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0389), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to

<http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2012-0389" in the "Keyword" box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, insert "USCG-2012-0389" and click "Search." You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one by using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Background and Purpose

On the weekend of August 3 through 5, 2012, The Nautical City Festival will be celebrating Calcite's 100th Anniversary. As part of that celebration, an air show will be launched to the east of the Rogers City marina. The Captain of the Port Sault Sainte Marie has determined that the air show event poses various hazards to the public such as debris falling into the water and general congestion of the waterway.

Discussion of Proposed Rule

To safeguard against the dangers posed by the Nautical City Festival air show near Rogers City, MI, the Captain of the Port Sault Sainte Marie has determined that a temporary safety zone is necessary. Thus, the Captain of the Port Sault Sainte Marie proposes to establish a safety zone on Lake Huron to include all waters within a 5000' by 2000' rectangle bounded by a line drawn from 45°25'30.67"N, 083°48'19.54"W then southeast to 45°25'24.85"N, 083°47'09.68"W then southwest to 45°25'05.41"N, 083°47'12.84"W then northwest to 45°25'11.30"N 083°48'22.88"W then back to the point of origin [DATUM: NAD 83].

This proposed safety zone would be enforced from 1:00 p.m. until 5:00 p.m. each day on August 3 - 5, 2012. Entry into, transiting, or anchoring within the proposed safety zone would be prohibited unless authorized by the Captain of the Port Sector Sault Sainte Marie or his on-scene representative. All persons and vessels authorized to enter the proposed safety zone would be required to comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone established by this proposed rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters in that vessels may still transit unrestricted portions of the waterways. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the

Port Sault Sainte Marie. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the enforcement of this proposed safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit around the waters near Rogers City, Michigan, between 1:00 p.m. and 5:00 p.m. on August 3 through 5, 2012.

This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for only four hours per day. Vessel traffic may still safely pass outside the safety zone during the event. In the event

that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Sainte Marie to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact MST3 Kevin Moe, Prevention Department, Coast Guard Sector Sault Sainte Marie, MI at (906) 253-2429. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not affect the taking of

private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that

are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under ADDRESSES. This proposed rule involves the establishment of a safety zone and therefore paragraph (34) (g) of figure 2-1 applies. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0389 to read as follows:

§ 165.T09-0389 Safety Zone: Nautical City Festival Air Show, Rogers City MI.

(a) Location. The following area is a temporary safety zone: All U.S. navigable waters of Lake Huron inside a 5000' by 2000' rectangle bounded by a line drawn from 45°25'30.67"N, 083°48'19.54"W then southeast to 45°25'24.85"N, 083° 47'09.68"W then southwest to 45°25'05.41"N, 083°47'12.84"W then northwest to 45°25'11.30"N 083°48'22.88"W then back to the point of origin [DATUM: NAD 83].

(b) Enforcement period. This regulation will be enforced from 1 p.m. until 5 p.m. on August 3 - 5, 2012.

(1) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of the safety zone established under this section.

(2) The Captain of the Port, Sector Sault Sainte Marie, will notify the public of the enforcement and suspension of enforcement of the safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(c) Definitions. The following definitions apply to this section:

(1) Designated representative means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Sault Sainte Marie to monitor these safety zones, permit entry into these safety zones, give legally enforceable orders to persons or vessels within these safety zones, or take other actions authorized by the Captain of the Port.

(2) Public vessel means a vessel owned, chartered, or operated by the United States or by a State or political subdivision thereof.

(d) Regulations. (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Sault Sainte Marie or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) When the safety zone established by this section is being enforced, all vessels must obtain permission from the Captain of the Port Sault Sainte Marie or his or her designated representative to enter, move within, or exit that safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his or her designated representative. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(e) Exemption. Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

Dated: May 4, 2012

J. C. MCGUINESS
Captain, U.S. Coast Guard
Captain of the Port Sault Sainte Marie

[FR Doc. 2012-12261 Filed 05/18/2012 at 8:45 am; Publication
Date: 05/21/2012]